

08 CIV 6361

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

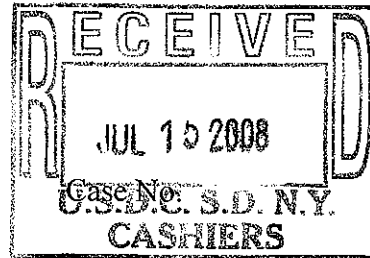
APPALACHIAN INSURANCE COMPANY,

Plaintiff,

vs.

CENTURY INDEMNITY COMPANY,  
as successor to CCI Insurance Company,  
as successor to Insurance Company of  
North America,

Defendant.



**COMPLAINT**

Plaintiff Appalachian Insurance Company ("Appalachian"), by and through its attorneys, and for its Complaint against Defendant Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America ("INA"), alleges as follows:

**NATURE OF THE ACTION**

1. This is a civil action brought by Appalachian relating to the obligations owed to it by INA pursuant to certain contracts of reinsurance entered between the parties, and INA's subsequent breach of those contracts.

**PARTIES**

2. Plaintiff Appalachian is a Rhode Island corporation with its principal place of business in Johnston, Rhode Island.

3. Defendant INA is a Pennsylvania corporation with its principal place of business in Philadelphia, Pennsylvania.

**JURISDICTION AND VENUE**

4. This matter is brought pursuant to 28 U.S.C. §1332. The amount in controversy in this action exceeds Seventy-Five Thousand Dollars (\$75,000), exclusive of interest, costs and fees.

5. Venue lies in this forum pursuant to 28 U.S.C. §1391(b) because the claims herein alleged are substantially related to events occurring in this district.

**THE REINSURANCE CERTIFICATES**

6. Appalachian and INA entered into the following Certificates of Facultative Reinsurance, with Appalachian as the Reinsured and INA as the Reinsurer: (1) Certificate No. FRC01355, effective November 1, 1972 to November 1, 1975; and (2) Certificate No. FRC01356, effective November 1, 1972 to November 1, 1975 (collectively, the "Reinsurance Certificates"). True and correct copies of the Reinsurance Certificates as contained in Appalachian's files are attached hereto as Exhibits "A" and "B," respectively.

7. The Declarations of the Certificates provide that INA will, on a Contributing Excess basis, pay Appalachian a portion of loss, excess of a stated retention maintained by Appalachian, that Appalachian incurs under reinsured excess third party liability policies of insurance issued by Appalachian to Dresser Industries, Inc., et al. ("Dresser").

8. The Reinsurance Certificates include the following provisions:

A. The Company [Appalachian] warrants to retain for its own account or that of its reinsurer(s) the amount of liability specified in Item 3 of the Declarations, unless otherwise declared to the Reinsurer [INA], and the liability of the Reinsurer specified in Item 4 of said Declarations shall follow that of the Company and except as otherwise specifically provided herein, shall be subject in all respects to all the terms and conditions of the Company's policy except such as may purport to create a direct obligation of the

Reinsurer to the original Insured. The Company shall furnish the Reinsurer with a copy of its policy and all endorsements thereto which in any manner affect this certificate, and shall make available for inspection and place at the disposal of the Reinsurer at reasonable times any of its records relating to this reinsurance or claims in connection therewith.

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C. All claims involving this reinsurance, when settled by the Company, shall be binding on the Reinsurer, which, shall be bound to pay its proportion of such settlements, and in addition thereto, in the ratio that the Reinsurer's loss payment bears to the Company's gross loss payment, with respect to business accepted on an excess of loss basis and in the ratio that the Reinsurer's limit of liability bears to the Company's gross limit of liability with respect to business accepted on a pro rata basis, its proportion of expenses, other than Company salaries and office expenses, incurred by the Company in the investigation and settlement of claims or suits and, with the prior consent of the Reinsurer to trial court proceedings, its proportion of court costs and interest on any judgment or award.

D. Payment of its proportion of loss and expense paid by the Company will be made by the Reinsurer to the Company promptly following receipt of proof of loss.

See Exhibits "A" and "B."

#### **THE APPALACHIAN POLICIES AND THE UNDERLYING INSURANCE ACTION**

9. Appalachian issued certain excess liability policies to Dresser in the 1970s, under which Dresser alleged that it was entitled to coverage for certain asbestos-related liabilities described hereinbelow.

10. The following excess liability policies issued by Appalachian to Dresser are reinsured under the Reinsurance Certificates: (1) Excess Third Party Liability Policy No. XL 71377, effective from November 1, 1972 to November 1, 1975, reinsured by Certificate No. FRC 01356; and (2) Excess Third Party Liability Policy No. XL 71378, effective from November 1, 1972 to November 1, 1975, reinsured by Certificate No. FRC 01355. Policy No. XL 71378 was cancelled effective November 1, 1973.

11. Hundreds of thousands of claims were made around the country against Dresser and its subsidiary, Harbison-Walker Refractories ("H-W"), in which claimants alleged to have suffered various diseases and injuries that they attributed to exposure to asbestos in Dresser's and its subsidiary's products.

12. Dresser filed a coverage action against Appalachian in Texas in September of 2001, seeking a judicial declaration with respect to insurance coverage for the underlying asbestos claims (the "Dresser coverage action").

13. The Dresser coverage action, as well as certain coverage claims brought by H-W against Dresser and its insurers, including Appalachian, were ultimately mediated and settled pursuant to a confidential Settlement Agreement and Release executed by Appalachian on November 15, 2004.

14. Appalachian kept INA apprised in writing of all of the significant underlying developments, including details of the mediation and settlement as they took place.

**FIRST CAUSE OF ACTION**  
**(Breach of Contract)**

15. Appalachian repeats and incorporates by reference all the allegations set forth in Paragraphs 1 through 14 as though fully set forth herein.

16. Appalachian ceded to and billed INA its portion of the settlement payable per the terms, conditions and provisions of the Reinsurance Certificates as follows: (1) \$157,058 by letter dated January 23, 2007 under Certificate No. FRC 01356; (2) \$885,695 by letter dated December 27, 2007 under Certificate No. FRC 01356; and (3) \$557,060 by letter dated December 27, 2007 under Certificate No. FRC 01355, for the total billed amount of \$1,599,813.

17. To date, INA has failed to pay Appalachian any portion of the amount due and owing under the Reinsurance Certificates.

18. INA has breached the terms, conditions and provisions of the Reinsurance Certificates by its failure to pay any portion of the \$1,599,813 properly ceded to those certificates by Appalachian.

19. Appalachian has satisfied any and all obligations and conditions that it owes or may owe under the terms and provisions of the Reinsurance Certificates.

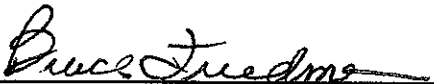
WHEREFORE, Appalachian hereby requests that the Court enter judgment in its favor:

- (a) holding that INA breached the terms, conditions and provisions of the Reinsurance Certificates, as well as its duty of utmost good faith and fair dealing owed to Appalachian;
- (b) holding that INA must pay Appalachian compensatory damages as a result of INA's breach of the Reinsurance Certificates; and
- (c) awarding Appalachian such other and further relief as this Court may deem appropriate, including attorney's fees, expenses and costs.

Respectfully submitted,

RUBIN, FIORELLA & FRIEDMAN LLP

By:



Bruce M. Friedman, Esq. (BF-9074)  
*bfriedman@rubinfiorella.com*  
One of the attorneys for Plaintiff  
Appalachian Insurance Company  
292 Madison Avenue, 11<sup>th</sup> Floor  
New York, New York 10017  
(212) 953-2381

Of Counsel:

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Suite 2400  
Chicago, Illinois 60606  
(312) 762-3100

*Attorneys for Plaintiff*  
*Appalachian Insurance Company*

Dated: July 14, 2008

260111



INSURANCE COMPANY OF NORTH AMERICA  
~~1600 Arch Street~~  
~~Philadelphia, Pennsylvania 19104~~  
 250 Broadway, New York, N. Y. 10007

FRC 01355

## DECLARATIONS

## CEDING COMPANY AND ADDRESS

Appalachian Insurance Company  
 c/o Willcox, Baringer & Company, Inc.  
 127 John Street  
 New York, New York 10038

## INTERMEDIARY

## ATTENTION

Mr. James R. Force  
 Assistant Vice President

NAME OF INSURED Dresser Industries, Inc. etal		RENEWAL OF CERTIFICATE NO. FRC
CITY P.O. Box 718, Dallas, Texas 75221	STATE	REPLACES CERTIFICATE NO. FRC
COMPANY POLICY NO. XL 71378	POLICY PERIOD November 1, 1972 to November 1, 1975	

TYPE OF INSURANCE	POLICY LIMIT AND APPLICATION	ITEM 1 COMPANY RETENTION	ITEM 2 REINSURANCE ACCEPTED	ITEM 3 EXCESS OF RETENTION
Excess Umbrella Liability	\$5,000,000 CSL each occ. agg. part of \$25,000,000 CSL each occ.-agg. excess \$65,000,000 CSL each occ. agg. which is excess of underlying insurance.	\$2,500,000 CSL each occ.-agg. part of \$5,000,000 CSL each occ.-agg.	\$2,500,000 CSL each occ.-agg. part of \$5,000,000 CSL each occ.-agg. D.K. per M.W.P. 12	Contributing Excess

THE TERM OF THIS CERTIFICATE  
 UNLESS TERMINATED BY CANCELLATION,  
 SHALL BE FROM THE

1st DAY OF November, 1972 TO THE 1st DAY OF November, 1975

THE NET PREMIUM FOR THIS CERTIFICATE SHALL BE \$ 2,906.25 ☒ FIXED CHARGE ☐ DEPOSIT PREMIUM  
 payable in equal annual installments of \$968.75 each

PREMIUM BASIS	ESTIMATED EXPOSURE	RATE	ESTIMATED PREMIUM

AUDIT PERIOD

MINIMUM PREMIUM FOR REINSURANCE PERIOD  
 \$2,906.25

MINIMUM PREMIUM FOR CERTIFICATE  
 \$150.00

COUNTERSIGNED AT New York, N. Y. THE 30th DAY OF March 1973  
 AEB/af-3/30/73 INSURANCE COMPANY OF NORTH AMERICA

BY

*A. B. Bingham*

AUTHORIZED SIGNATURE



INSURANCE COMPANY OF NORTH AMERICA

1600 Arch Street  
Philadelphia, Pennsylvania 19101

(Harris, 1994; The Bunker)

In consideration of the payment of the premium, and subject to the terms, conditions and limits of liability set forth herein, and as the Declared made a part hereof, the Reinsurer does hereby reinsure the ceding company (named in the Declaration therein called the Company) in respect of the Company's policy as follows:

## REINSURING AGREEMENTS AND CONDITIONS

A. The Company warrants to retain for its own account, that of its treaty reinsurer (s) the amount of liability specified in Item 3 of the Declarations, unless otherwise declared to the Reinsurer, and the liability of the Reinsurer specified in Item 4 of said Declarations shall follow that of the Company and except as otherwise specifically provided herein, shall be subject in all respects to all the terms and conditions of the Company's policy except such as may purport to create a direct obligation of the Reinsurer to the original insured. The Company shall furnish the Reinsurer with a copy of its policy and all endorsements thereto in which it is named as reinsurer, and shall make available for inspection and place at the disposal of the Reinsurer at reasonable times any of its records relating to this reinsurance or claims in connection therewith.

8. Prompt notice shall be given to the Reinsurer by the Company of any occurrence or accident which appears likely to involve this reinsurance and while the Reinsurer does not undertake to investigate or defend claims or suits it shall nevertheless have the right and be given the opportunity to associate with the Company and its representatives at its own expense in the defense and control of any claim, suit or proceeding involving this reinsurance, with the full cooperation of the Company.

C. All claims involving this insurance when settled by the Company shall be binding on the Reinsurer, which shall be bound to pay its proportion of such settlements, and in addition thereto in the ratio that the Reinsurer's loss payment bears to the Company's gross loss payment, with respect to business accepted on an excess of loss basis and in the ratio that the Reinsurer's limit of liability bears to the Company's gross limit of liability, with respect to business accepted on a pro rata basis. Compensation of expenses, other than Company salaries and office expenses incurred by the Company in the investigation and settlement of claims as well as with the prosecution of the Reinsurer to final court proceedings, is proportion of net costs and interest on any judgment or award.

13. Payment of a proportion of loss and expense, paid by the Contractor, will be made by the Rem insurer to the Company promptly following receipt of proof of loss.

1. The Reinsurer will be paid or credited by the Company with its proper portion of salvage, or reimbursement, or both, or recovery, made by the Company, less the actual cost (including Company Salvage and Office Expenses) of obtaining such reimbursement or making such recovery. If the reimbursement afforded by this Certificate is on the basis of loss, salvage shall be applied in the inverse order in which liability attached.

F. The Company will be liable for all sums on which the insured is insured under this Certificate.

[illegible]

10. Cancellation of a license for the reasons set forth in the  
 cancellation of this Certificate and it may also be cancelled on a per se  
 basis by either party, pending or delivering to the other written notice stating  
 -how, and less than 10 (10) days thereafter such cancellation shall be  
 effective.

The terms of this Certificate shall not be subject to amendment by the Insurer without the written consent of the Reinsured.

### Mr. William Bennett

by its President and Secretary Treasurer is filed. And it is the duty of the Board to provide for the payment of the salaries of the President and Secretary Treasurer and the other officers and members of the Board.

22009, 11





INSURANCE COMPANY OF NORTH AMERICA

In consideration of the payment of the premium as herein provided, Reinsuring Agreement "A" is amended to read as follows:

A. The Company warrants to retain for its own account or that of its reinsurer(s) the amount of liability specified in Item 3 of the Declarations, unless otherwise declared to the Reinsurer, and the liability of the Reinsurer specified in Item 4 of said Declarations shall follow that of the Company and except as otherwise specifically provided herein, shall be subject in all respects to all the terms and conditions of the Company's policy except such as may purport to create a direct obligation of the Reinsurer to the original Insured. The Company shall furnish the Reinsurer with a copy of its policy and all endorsements thereto which in any manner affect this certificate, and shall make available for inspection and place at the disposal of the Reinsurer at reasonable times any of its records relating to this reinsurance or claims in connection therewith.

Nothing herein contained shall vary, alter or extend any provision or condition of the certificate other than as above stated.

CEDING CO.	Appalachian Insurance Company		
NAME OF INSURED	Dresser Industries, Inc. etal		
CERTIFICATE NO. FRC	01355		
EFFECTIVE DATE:	11/1/72	ENDORSEMENT NO.	1

AEB/af-3/30/73

Authorized Agent

President

CERTIFICATE OF FACULTATIVE REINSURANCE ISSUED BY

FRC 01356



## INSURANCE COMPANY OF NORTH AMERICA

~~1600 Arch Street~~  
~~Philadelphia, Pennsylvania 19101~~  
 250 Broadway, New York, N. Y. 10007

## DECLARATIONS

## CEDING COMPANY AND ADDRESS

Appalachian Insurance Company  
 c/o Willcox, Baringer & Company, Inc.  
 127 John Street  
 New York, New York 10038

## INTERMEDIARY

## ATTENTION

Mr. James R. Force  
 Assistant Vice President

NAME OF INSURED Dresser Industries, Inc. et al		RENEWAL OF CERTIFICATE NO. FRC
CITY P.O. Box 718, Dallas, Texas 75221	STATE	REPLACES CERTIFICATE NO. FRC
COMPANY POLICY NO. XB 71377	POLICY PERIOD November 1, 1972 to November 1, 1975	

ITEM 1 TYPE OF INSURANCE	ITEM 2 POLICY LIMITS AND APPLICATION	ITEM 3 COMPANY RETENTION	ITEM 4 REINSURANCE ACCEPTED	ITEM 5 BASIS OF ACCEPTANCE
Excess Umbrella Liability	\$5,000,000 CSL each occ. agg. part of \$15,000,000 CSL each occ.-agg. excess of \$50,000,000 CSL each occ.-agg. which is ex- cess of underlying insur- ance.	\$2,500,000 CSL each occ.-agg. part of \$5,000,000 CSL each occ.-agg.	\$2,500,000 CSL each occ.-agg. part of \$5,000,000 CSL each occ.-agg.  O.K. per MWP. u	Contributing Excess

THE TERM OF THIS CERTIFICATE  
 UNLESS TERMINATED BY CANCELLATION,  
 SHALL BE FROM THE

1st DAY OF November, 1972 TO THE 1st DAY OF November, 1975

THE NET PREMIUM FOR THIS CERTIFICATE SHALL BE \$ 3,487.50 ☒ FIXED CHARGE ☐ DEPOSIT PREMIUM  
 payable in equal annual installments of \$1,162.50 each

PREMIUM BASIS	ESTIMATED EXPOSURE	RATE	ESTIMATED PREMIUM
AUDIT PERIOD	MINIMUM PREMIUM FOR REINSURANCE PERIOD \$3,487.50	MINIMUM PREMIUM FOR CERTIFICATE \$500.00	

COUNTERSIGNED AT New York, N. Y. THE 30th DAY OF March 19 73  
 AEB/af-3/30/73  
 INSURANCE COMPANY OF NORTH AMERICA

BY

AUTHORIZED SIGNATURE

INSURANCE COMPANY OF NORTH AMERICA  
1600 Arch Street  
Philadelphia, Pennsylvania 19101

(herein, called, the Reinsurer)

In consideration of the payment of the premium, and subject to the terms, conditions and limits of liability set forth herein, and in the Declaration made part hereof, the Reinsurer does hereby reinsure the ceding company named in the Declaration (herein called the Company) in respect of the policy as follows:

REINSURING AGREEMENTS AND CONDITIONS

ATTENTION

A. The Company warrants to obtain for its own account a copy of its treaty reinsurer (a) the amount of liability specified in Item 3 of the Declaration, unless otherwise declared to the Reinsurer, and the liability of the Reinsurer specified in Item 4 of said Declaration shall follow that of the Company and except as otherwise specifically provided herein, shall be subject in all respects to all the terms and conditions of the Company's policy, except such as may purport to create a direct obligation of the Reinsurer to the original insured. The Company shall furnish the Reinsurer with a copy of its policy and all endorsements thereto which in any manner affect this certificate, and shall make available for inspection and place at the disposal of the Reinsurer at reasonable times any of its records relating to this reinsurance or claims in connection therewith.

B. Prompt notice shall be given to the Reinsurer by the Company of any occurrence or accident which appears likely to give rise to this reinsurance and while the Reinsurer does not undertake to investigate or defend claims of suits it shall nevertheless have the right and be given the opportunity to associate with the Company and its representatives at its own expense in the defense and control of any claim, suit or proceeding involving this reinsurance, with the full cooperation of the Company.

C. All claims involving this reinsurance, when settled by the Company, shall be binding on the Reinsurer, which shall be bound to pay its proportion of such settlements, and in addition thereinto, in the ratio that the Reinsurer's loss payment bears to the Company's gross loss payment, with respect to business accepted on an excess of loss basis and in the ratio that the Reinsurer's limit of liability bears to the Company's gross limit of liability with respect to business accepted on a pro rata basis, its proportion of expenses, other than Company salaries and office expenses incurred by the Company in the investigation and settlement of claims or suits, and, with the prior consent of the Reinsurer, to trial costs, its proportion of court costs and interest on any judgment or award.

D. Payment of its proportion of loss and expenses, paid by the Company, will be made by the Reinsurer to the Company promptly following receipt of proof of loss.

E. The Reinsurer will be paid or credited by the Company with its proportion of salvage, i.e., reimbursement obtained or recovery proceeds by the Company, less the actual cost (including Company salaries and expenses) of obtaining such reimbursement or making such recovery. If the reinsurance provided by this certificate is on the basis of first loss, the above shall be applied in the inverse order, i.e., which liability, attached

F. The Reinsurer shall be bound to pay its proportion of loss and expenses, paid by the Company, will be made by the Reinsurer to the Company promptly following receipt of proof of loss.

G. In the event of insolvency of the Company, the Reinsurer shall be bound to pay its proportion of loss and expenses, paid by the Company, will be made by the Reinsurer to the Company promptly following receipt of proof of loss.

H. The terms of this certificate shall not be altered by any amendment, endorsement, or other writing, unless such amendment, endorsement, or other writing is signed by a duly authorized representative of the Reinsurer.

IN WITNESS WHEREOF

by its President and Secretary Treasurer at this Philadelphia, Pa. day of July 2008, the undersigned, whose names and positions are subscribed hereon, constitute the Reinsurer.

*Shirley A. [Signature]*

*[Signature]*

COPIES OF THIS CERTIFICATE



INSURANCE COMPANY OF NORTH AMERICA

In consideration of the payment of the premium as herein provided, Reinsuring Agreement "A" is amended to read as follows:

A. The Company warrants to retain for its own account or that of its reinsurer(s) the amount of liability specified in Item 3 of the Declarations, unless otherwise declared to the Reinsurer, and the liability of the Reinsurer specified in Item 4 of said Declarations shall follow that of the Company and except as otherwise specifically provided herein, shall be subject in all respects to all the terms and conditions of the Company's policy except such as may purport to create a direct obligation of the Reinsurer to the original Insured. The Company shall furnish the Reinsurer with a copy of its policy and all endorsements thereto which in any manner affect this certificate, and shall make available for inspection and place at the disposal of the Reinsurer at reasonable times any of its records relating to this reinsurance or claims in connection therewith.

Nothing herein contained shall vary, alter or extend any provision or condition of the certificate other than as above stated.

CEDING CO.	Appalachian Insurance Company		
NAME OF INSURED	Dresser Industries, Inc. etal		
CERTIFICATE NO. FRC	01356		
EFFECTIVE DATE:	11/1/72	ENDORSEMENT NO.	1

AEB/af-3/30/73

*A. Bingay*  
 \_\_\_\_\_  
 Authorized Agent

*Charles K. Cox*  
 \_\_\_\_\_  
 President